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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,992	11/06/2000	Meldon L. Talbot		8526

7590

10/01/2002

Edward S Irons
3945 52nd Street N W
Washington, DC 20016

EXAMINER

HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/01/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/706,992

Applicant(s)

TALBOT, MELDON L.

Examiner

Lalita M Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on October 24, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Summary

On July 17, 2001, an Office Action was sent to the Applicant rejecting claims 1-12. On October 24, 2001, the Applicant responded by amending claims 1, 6, and 12.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejections set forth in the previous Office Action, paper no.2, have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castiglia ('746) in view of Wise ('751).

Castiglia discloses a single ankle strap comprising a flexible strap (fig.3-9), an array of plastic hooks disposed only on one side of the first and second ends of the straps (20 and 23), an array of plastic loops for engaging the array of plastic hooks (16 and 21), an array of plastic hooks and loops disposed on opposite sides of the strap (fig.1-2), a constant width fabric (fig.1-2), the strap made of non-adhesive material (col.2, lines 38-48), the method for bracing the ankle comprising the steps of providing a

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single ankle strap (fig.3), wrapping the single strap around the ankle and associated foot in a figure eight configuration wherein the end of the strap is positioned on the side which has no plastic hooks disposed (fig.3), passing a length of the strap at least once around the foot passing under the foot in front of the heel to provide one loop of said figure eight configuration then passing across a section of the strap above the foot and then around the back of the ankle to provide the other loop of the figure eight configuration (fig.3-4), wherein the wrapping exposes the array of plastic loops and wherein the wrapping provides a free end of the strap upon which an array of plastic hooks is disposed (fig.5-6), pressing the plastic loops exposed by said wrapping together with the array of plastic hooks on the free end of the strap (fig.7-9), the method of wrapping the single strap around the ankle in a figure eight configuration wherein the figure eight configuration comprises a beginning end positioned at the inside of the ankle (fig.3), crosses over the medial arch, loops below the front of the heel (fig.3-4), crosses over the medial arch and loops back around the back of the ankle (fig.4), and fastens to itself at the beginning end of the figure eight configuration (fig.5-6); however, Castiglia does not disclose a strap of inelastic material. Wise teaches an ankle strap comprising a flexible, inelastic material (col.2, lines 2-6 and see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the flexible, inelastic material taught by Wise in place of the elastic strap disclosed by Castiglia to provide better support and acceptable levels of comfort when the strap is wrapped in a figure eight position about the foot and ankle.

Response to Arguments

Applicant's arguments filed October 24, 2001 have been fully considered but they are not persuasive. In response, to the Applicant's argument that there is no motivation for combining the Castiglia and Wise references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of the primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (SSPA 1971). References are evaluate by they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA) 1969. In this case, Castiglia discloses all limitations of the invention substantially as claimed (see above rejection), **except** for the inelastic material. Wise discloses an ankle strap comprising a single strap with a loop at the end of the strap for wrapping underneath the foot (fig.1-2) comprising flexible, inelastic material (col.2, lines 2-6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the flexible, inelastic material taught by Wise in place of the elastic material disclosed by Castiglia to provide an alternative material for the strap which would provide better support and acceptable levels of comfort when the strap is wrapped in a figure eight position about the foot and ankle.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-

2272.


LMH

September 10, 2002


JUSTINE R. YU
PRIMARY EXAMINER